



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:)	
)	
George Harry Hoffman, et al.)	
)	Group Art Unit: 2876
Serial No. 09/815,580)	
)	Examiner: Ahshik Kim
Filed: March 23, 2001)	
)	Attorney Docket No. 062834-0104
For: SYSTEM, METHOD AND)	
COMPUTER PROGRAM PRODUCT)	
FOR USE OF BAR CODES IN A)	
SUPPLY CHAIN MANAGEMENT)	
FRAMEWORK)	

APPELLANT'S BRIEF UNDER 37 C.F.R. § 1.192

Commissioner for Patents
Washington, D.C. 20231

Sir:

The following is Appellant's Brief, submitted in triplicate and under the provisions of 37 C.F.R. § 1.192. The fee of \$320.00 required by C.F.R. 1.117(C) is provided in a check submitted herewith.

1. Real Parties in Interest

The real party in interest is the assignee of record, Restaurant Services, Inc.

2. Related Appeals and Interferences

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing in the present appeal, that are known to appellant, the assign, or appellant's representative.

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3. Status of Claims

The present appeal is directed to claims 1-18; i.e., all of the presently pending claims in this application.

4. Status of Amendments

No amendments were entered to the claims after Final Rejection and no amendments are pending.

5. Summary of the Invention

One of the problems to which the claimed invention is directed is a need to give an independent supply chain management system and its members which are each independent of the supply chain management system and independent from other members, a picture of the type and quantity of goods that are present at each point in the supply chain, so that each member will know how much inventory is on hand, how much inventory is on its way, and at what locations that inventory currently resides (which warehouse, which distribution center, which store or other facility). A fundamental problem in such an environment is that each entity in the independent supply chain system has its own numbering system, nomenclature and data structures. The present claimed invention makes it possible for the system and its individual stores and supplier and warehouse members to look down to the store level, and up to the supplier/warehouse/distribution center levels and make decisions based on this inventory position data. The concept of supply chain management, even if it was disclosed for a particular company, would inherently be a closed system, using a particular proprietary numbering system and nomenclature.

One of the principal uses of this inventory information from different points in the supply chain is to allow business decisions to be made regarding the product supply on hand in the supply chain pipeline to cover blips in sales due to promotions and for other reasons. One of the business decisions that is possible is to reposition product inventory between warehouses, distribution centers and stores to take account of such sales blips or simply to prepare for an upcoming promotion. A key feature is to track orders that have already been placed, to determine where the ordered inventory is

currently located, e.g., is the inventory still at the distributor, is the inventory in an interim warehouse, has the inventory been delivered to the ordering store. Thus, an independent member of the supply chain system or the supply chain management system itself can determine if there is excess inventory at a store or a distribution center for a store that is seeing very low product sales during a promotion or is projected to see very low sales, while another store is seeing or is projected to see a substantial increase in sales during the same promotion, and can take an immediate action such as the system manager or the store requesting/initiating repositioning of inventory. As another example, assume that a store is running out of a given product due to higher than predicted sales of the product. The store will be able to access the supply chain management system and learn that two warehouses A and B contain the product. It might learn that warehouse A holds 3000 of the product, designated as product A759 within the warehouse A operation, while warehouse B holds 5000 of the product, designated as product B32 within the warehouse B operation. The critical feature that makes the present invention work across such independent entities with their own numbering systems and nomenclatures is the tracking using the bar codes for the supply chain management framework. The inquiring member in this situation would learn from accessing the database via the Web that the 3000 pieces of product A759 and the 5000 pieces of product B32 are the identical product. The inquiring member thus will have the flexibility to order a product delivery from either or both of the warehouses.

The applicants' disclosure is replete with references to this aspect. For example,

see page 29, lines 18-21;

see page 34, lines 4-10 "The timeliness and level of detail of this information enable the supply chain coordinator to manage distributors and suppliers at standards prior art systems have been unable to achieve before. For example, timely performance information is provided against which the Supply Chain management (coordinator) can take immediate action. Such performance information includes system inventory levels and movement...";

see page 35, line 8;

see page 37, lines 2-8;

see page 40, lines 12-17 " As part of the data needs analysis, there are three different processes that address the issue of improving supply chain performance during promotional periods. These processes are: Zero tolerance – meaning that there was no tolerance for either excess inventories after the promotion, nor is it appropriate to run out of product during the promotion... One objective of the sales forecasting and reporting system is to provide timely information to the supply chain allowing for: production, inventory and logistics planning; reaction to deviations from the plan as quickly as possible...";

see page 47, lines 24-27 "The distributor sends invoice level sales information to the supply chain coordinator and receives daily product movement reports. The supply chain coordinator also receives invoice level sales data from the supplier and returns daily product movement reports to the supplier.";

see page 48, lines 23 – page 49, lines 5-6 "Fig. 29 is a flowchart of a process 2930 for generating supply chain statistics. Data is received from a plurality of stores, distributors, and suppliers of a supply chain operation 2932.....In one aspect, the statistics may represent an inventory of the supplier." (Note that the sampling aspect is limited to the preferred embodiment only);

see page 49, lines 10-15 relating to the inventory report in the system for a given distribution center, and lines 27-28 relating to the inventory management Max Days On Hand data;

see page 50, lines 17-21 "A projected daily usage of the promotion item is calculated for a plurality of locations based on the data in operation 3734 and the projected daily usage of the promotion item is outputted utilizing a network with TCP/IP protocol in operation 3736. Using this information, supplies can be shipped where they are needed, on a daily basis if need be." (Implicit in this statement is that to ship supplies to where they are needed, the system must know the inventory levels at the various warehouses and distribution centers within the system.);

see page 87, lines 26-27 "As a further aspect, the database may include data representative of goods in an inventory of the supplier."

See page 90, lines 6-22 relating to bar code tracking.

Thus, the system is directed to providing the tools to move inventory within the supply chain based on aberrations or projected aberrations in demand, particularly during promotions. The tracking for the network-based system chain management framework may be accomplished as follows: when the truck or other vehicle carrying the products arrives at a warehouse, or distribution center, or store, all of the products are scanned with a barcode reader to determine the product name and quantity being transferred into or out of that location.

6. Issues

The issue on appeal is whether the Examiner erred in rejecting claims 1-21 under 35 U.S.C. 102(e) as being anticipated by Perkowski (U.S. Patent No. 5,950,173).

7. Grouping of the Claims

The claims do not stand or fall together. The claims are grouped as follows:

Group 1:	Claims 1-6
Group 2:	Claims 7-12
Group 3	Claims 13-18.

8. Argument

A. Group 1

It is respectfully submitted that the Examiner's rejection of the claims in Group 1 is erroneous for the following reasons:

Referring to claim 1, a method for tracking a shipment of goods in a network-based supply chain management framework is claimed. Specific limiting steps are set

forth including "sending a distributor an order for goods from a supply chain participant utilizing the network." Also included is the step of "tracking the goods utilizing a bar code." Also included is the step of "storing results of the tracking in a database." Also included is the step of "allowing the supply chain participant to access the results of the tracking utilizing a network with TCP/IP protocol." These steps are combined in a unique and nonobvious combination to form a system which is not disclosed or suggested by the prior art.

Referring to the Office Action, the Examiner states that Perkowski teaches a supply chain management framework comprising a bar code reader 23 for retrieving product related and other information from various databases and allowing users to create and distribute orders and track products. This statement by the Examiner is respectfully traversed. In this regard, the references to bar code in Perkowski are exclusively related to allowing a consumer to access product related information such as product advertisements, product specifications, product updates, product distributors, product warranty/servicing, and/or product incentives. There is no disclosure of tracking goods, there is no disclosure of then storing the results of the tracking in a database, and there is no disclosure of then allowing a supply chain participant to access the results of the tracking.

Referring to Perkowski, the term "bar code" is referenced in five places. In a first place at column 6, lines 12-19, it is stated that

"Another object of the present invention is to provide such a system, wherein when the system is in its IPI Finder Mode, a predesignated information resource (e.g. advertisement, product information, etc.) pertaining to any commercial product registered with the system can be automatically accessed from the Internet and displayed from the Internet browser by simply entering the registered product's UPN into the Internet browser manually or by bar code symbol scanning."

A second reference to "bar code" is set forth at column 7, lines 27-34, wherein it is stated

"Another object of the present invention is to provide such a system and method in the form of a computer-based kiosk installed within a retail shopping environment and having an automatic bar code symbol reader for reading the UPC numbers on consumer products being offered for sale in the store, and also a LCD touch-type display screen for displaying product-related information accessed from hyper-linked Web-sites on the Internet."

There is no tracking of product orders disclosed here. The next reference to "bar code" in Perkowski is found at column 17, lines 31-53, as follows:

"As shown in Fig. 3A1, any Client System of the present invention may be realized as a desktop computer workstation comprising: a processor and memory 19; a visual display monitor 20; a keyboard 21; a GUI mouse 22; and a bar code symbol reader 23 for reading UPC and other types of bar code symbols printed on products, brochures, documents, and the like.

As shown in Fig. 3A2, any Client Computer 13 may also be realized in the form of a Web-based multi-media kiosk, designed for use as a 'virtual sales agent' within retail shopping environments. As shown, the Web-based kiosk of the present invention comprises: a floor, wall or ceiling supported housing 25; an omnidirectional laser bar code symbol reader (e.g. Metrologic MS 6720 Laser Scanner) 26 for reading UPC (and other type of) symbols printed on products, brochures, documents and the like; an active matrix LCD type visual display screen 27 for viewing product related information automatically displayed thereon in response to the entry of the UPC numbers scanned into the UPC Number Entry Window 21D below the IPI Finder button 21A of the Control Switch 20B displayed on the Client System, as shown in Fig. 3A2;"

A further reference to "bar code" is found in Perkowski at column 20, line 5, in a paragraph relating to a UPC number. It is stated that a "one digit modulo check digit

(mathematically calculated) and added to each UPC number to check that the code has been read correctly by the bar code symbol reader.”

It is clear from the foregoing that Perkowski teaches the use by a consumer (not a “supply chain participant”) of a bar code reader in a kiosk for obtaining product warranty and specification information. There is no reference linking a bar code reader to a participant in a “network-based supply chain management framework.” As is clear from applicants’ specification, a “supply chain management framework” relates to manufacturers, distributors, and retailers. Additionally, it is clear that in Perkowski there is no reference to tracking goods placed in and flowing in a distribution system (the supply chain management framework) by a distributor by means of a bar code on the goods. Nor is there any reference to storing the results of the tracking in a database and allowing the supply chain participant to access the results of the tracking utilizing a network with TCP/IP protocol. Perkowski does not allow John Doe at a local store restaurant or other mall store to take the wrapper from a Whopper sandwich and track where his Whopper order is located.

The Examiner points to the section in Perkowski at column 10, line 56-column 11, line 5 for the proposition of “allowing users to create and distribute orders and track products.” But the disclosure at this point in Perkowski relates to an Electronic Trading Information Subsystem for allowing trading partners (e.g. a manufacturer and a retailer) to sell and purchase consumer goods by sending and receiving documents (e.g. purchaser orders, invoices, advance slip notices, etc.) to thereby consummate purchase and sales transactions using either EDI transmission or a web-based electronic document communication. The Examiner further directs applicants to Perkowski at column 11, line 12+, which recites a

“Transportation and Logistics Information Subsystem 7 for providing retailers with information about when ordered products (purchased by retailers at wholesale) will be delivered to the retailer’s stores; and Input/Output Port Connecting Subsystem 8 for interconnecting the input and output ports of the above-identified subsystems through the infrastructure of the Internet and various value-added EDI networks of global extent.”

Applicants point out that there is no disclosure of “tracking” in this reference in Perkowski. More specifically, it is stated that the Transportation and Logistics Information Subsystem 7 provides retailers “with information about when ordered products ... will be delivered.” This means providing an estimate of delivery dates based on past delivery averages for that area and a given ship date, or a delivery commitment date by the supplier. There is no reference to “tracking” in the statement. Moreover, there is no disclosure of the use of bar codes in such a Transportation and Logistics Information Subsystem 7, much less providing a communication interface to the consumer kiosk system and allowing a consumer to access this information.

It should be noted that Perkowski describes the use of a bar code reader in a kiosk in a mall in order for a consumer to obtain data about a product by scanning a product advertisement to thereby identify the product to a system and to correlate that product identification with warranty and specification information in the system for the product. In contrast, applicants’ invention is directed not to obtaining information, but to collecting information by identifying goods at various points using system bar codes as the goods flow through a distribution system between a manufacturer, warehouse, distribution center, and retailer (the “supply chain management framework”) and then providing that information to a “supply chain participant.” There is no reference in claim 1 in its last step to how the supply chain participant that desires access to the results of the tracking identifies the goods of interest to the system—this is not part of the invention and is irrelevant. (In all probability, the supply chain member uses a standard nomenclature term to designate the product to the system.) Rather, the claim is focused on information collection by tracking the actual location of goods as they flow through a distribution system by means of bar code readers at particular points within the system.

On page 3 of the Examiner’s Office Action, the Examiner states that it is obvious that the Transportation and Logistics Information Subsystem 7 entails a retailer placing an order to a wholesaler or a distributor. (Note that “obvious” is not a standard for section 102 rejections.) The Examiner then follows with the statement “Moreover, use of bar code is clearly disclosed in Perkowski (column 6, lines 12+).” But this is not an apparatus claims where an unrelated set of elements that do not work together

might suffice to sustain the rejection. Rather, it is a method claim. What is missing from this statement by the examiner is that there is no explicit or even suggested relationship between the Examiner's assumed placement of an order within the Transportation and Logistics Information Subsystem 7 and the statement cited by the Examiner at column 6, lines 12+, relating to the provision of a bar code reader in a kiosk to a consumer so that the consumer can identify products shown in advertisements to the system so that the system can then pull up and display warranty and specification information on the screen to the consumer, i.e., there is no tracking step. This reference to Perkowski by the Examiner relates to a consumer identifying the product to a kiosk system to thereby access advertisements and product specifications. It does not relate to collecting information by tracking/locating a product as it is received at various ports within a distribution system. The Transportation and Logistics Information Subsystem 7 of Perkowski is unrelated to the consumer kiosk information system disclosed by Perkowski. But even assuming for the sake of argument that there was some relationship between these disparate statements cited by the examiner (which there is not), and further assuming that there was disclosure in Perkowski (which there is not) that access to product information accessible on an Internet site of the Transportation and Logistics Information Subsystem 7 could be obtained by identifying a product by scanning a bar code on an advertisement for that product, there is still no disclosure in Perkowski of using one or more bar code readers at various locations within a distribution system to locate/track the product as being at that physical point within the system and then storing that information on a site at the Internet. Perkowski simply does not have this disclosure.

It is noted that the multiple limitations of "sending a distributor an order for goods from a supply chain participant using a network," "tracking the goods utilizing a bar code," "storing results of the tracking in a database," and "allowing the supply chain participant to access the results of the tracking utilizing a network with TCP/IP protocol" within the claimed combination of claim 1 constitute the very essence of applicants' invention and a point of novelty. Thus, specific citations to prior art must be cited for each of these key features in applicants' combination. They cannot be met by hindsight suggestions extracted from applicants' own disclosure.

Regarding claim 5, there is no disclosure in Perkowski of allowing a supply chain participant access only after its identity is verified. The citation by the Examiner in Perkowski of column 19, lines 46-54 pertains to using security procedures before allowing a systems administrator to change URL linking of related products. There is no suggestion of preventing access to a regular supply chain participant using identity verification.

Accordingly, a *prima facie* case has not been made and withdrawal of the rejection is respectfully requested. This rejection cannot stand and the claims of Group 1 are patentable over Perkowski.

B. Group 2

Independent claim 7 is an apparatus claim including the elements "logic for sending a distributor an order for goods from a supply chain participant utilizing the network;" "logic for tracking the goods utilizing a bar code;" "logic for storing results of the tracking in a database;" and "logic for allowing the supply chain participant to access the results of the tracking utilizing a network with TCP/IP protocol." The argument made for claim 1 pertains in most aspects to this claim.

Accordingly, this rejection cannot stand and the claims of Group 2 are patentable over Perkowski.

C. Group 3

Independent claim 13 is a program product claim including the elements "computer code for sending a distributor an order for goods from a supply chain participant utilizing the network;" "computer code for tracking the goods utilizing a bar code;" "computer code for storing results of the tracking in a database;" and "computer code for allowing the supply chain participant to access the results of the tracking utilizing a network with TCP/IP protocol." The argument made for claim 1 pertains in most aspects to this claim.

Accordingly, this rejection cannot stand and the claims of Group 3 are patentable over Perkowski.

9. Summary

For the foregoing reasons, it is submitted that the Examiner's rejections are erroneous, and reversal of the applied rejection is respectfully requested.

Respectfully submitted,

Date February 12, 2003

By 

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